

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,) CRIMINAL
5 Plaintiff,) NO. GJH-21-0101
6 v.)
7 MADANI ILARA TEJAN,)
8 Defendant.)

9 TRANSCRIPT OF JURY TRIAL PROCEEDINGS - DAY 8
10 BEFORE THE HONORABLE GEORGE J. HAZEL,
11 UNITED STATES DISTRICT JUDGE,
12 AND A JURY
13 FRIDAY, FEBRUARY 17, 2023; 10:18 A.M.
14 GREENBELT, MARYLAND

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28 ***COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES***

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1 (Call to order of the Court.)

2 THE COURT: You may be seated.

3 Good morning, everyone.

4 (Counsel reply, "Good morning, Your Honor.")

5 THE COURT: A few things. So, first on the exhibit
6 list issue, I know this is actually feedback that I have gotten
7 from prior jurors that I know I have passed on to individual
8 members of Ms. Cottingham's office, I don't know if I have ever
9 said it to the supervisors or anything, but -- but, again,
10 jurors have given us this feedback in the past. When we have
11 cases like this when there is just so much evidence, they get
12 back there and they are like, Oh, I just want to see the
13 picture of the wallet, just to come up with an example, and
14 they don't even know where to start. They just start, like,
15 flipping through stuff.

16 So I don't know if there is an exhibit list of only -- or
17 if something can be created of only admitted evidence with
18 non-argumentative descriptions. Right? So, like, I mean, it
19 wouldn't apply here, but you wouldn't have a picture of the
20 murder weapon or even picture of victim's wallet. Right? It
21 would have to be completely non-argumentative. But if such a
22 list exists, I don't see why we wouldn't want the jury to have
23 that.

24 I did read the email exchange. I understand Mr. Davis'
25 point, but I just think that could be terribly inefficient if

1 every time they want to find something, we all have to gather
2 together and help them find it. So, I don't know.

3 I guess my question is first for the government: Is
4 there something we could give them?

5 MR. COLLINS: Your Honor, there isn't one that exists
6 in the fashion that the Court has described; however, we
7 discussed possibly, you know, either redacting the original one
8 or -- or generating something that fits what the Court has just
9 described, a list of admitted items, and that it doesn't have
10 any descriptors that would I guess be perceived as, you know,
11 prejudicial.

12 THE COURT: You would obviously need to run it by
13 defense, and if both sides are okay with it, then it's fine.
14 If there is an issue, I will, of course, resolve it.

15 Mr. Davis looks like he has something he wants to say,
16 though.

17 MR. DAVIS: In the past, we have asked them to
18 identify what they would like to see, and then we would just
19 pull the exhibits. Do they have all the exhibits back there
20 with them?

21 THE COURT: Yes.

22 MR. DAVIS: I guess if they would just ask what they
23 wanted to see and we could identify from the list, that way, we
24 don't have to send back a list with 500 exhibits on it and
25 change all the descriptions. I mean, it's a lot of --

1 THE COURT: But the problem, as I just indicated, you
2 never know what's going on back there. That's one thing I have
3 learned from this job, right, because I get to go back and talk
4 to them at the end, and every jury is different is what I have
5 learned.

6 If they are the type of jury that is going to be looking
7 through a lot of evidence and -- and I want to see this and now
8 someone else wants to see this and someone else wants to see
9 this, then we are just going to be sitting here all day, and
10 every five minutes, they are going to be sending us a note,
11 Hey, can you tell us where this is? Can you tell us where that
12 is? It's just inefficient. We have sent back the evidence.
13 We should empower them to be able to find what they are looking
14 for.

15 You know, in cases where there is a gun or there is
16 drugs, we don't send that back. I presume we didn't send the
17 drugs back. Okay. But anything else, yeah, we just -- we give
18 it to them because we don't want to interfere with their
19 deliberations. I, frankly, don't want the lawyers to know
20 every time they are looking at a specific exhibit, nor do I
21 want to know that. I know you would love to know that, but
22 it's just inefficient.

23 MS. COTTINGHAM: Your Honor, I was going to say in a
24 case -- in the *Elbaz* case, we actually did -- I have had --

25 THE COURT: What case?

1 MS. COTTINGHAM: The *Elbaz* case. I have had cases
2 here not before you, although you did take the verdict in that
3 case.

4 THE COURT: Oh, okay. I do remember that.

5 MS. COTTINGHAM: We did send back an exhibit list
6 with an itemized descriptor, so there is some precedence for
7 doing it here.

8 THE COURT: That's Judge Chuang. Right?

9 MS. COTTINGHAM: Yes, Your Honor.

10 THE COURT: Yeah. I think he and I have discussed
11 this, so that doesn't surprise me. Yeah, if we can create
12 something like that, that would be helpful.

13 MR. DAVIS: That's okay. I would like to know what
14 they are looking at, and then that is, in part, the reason, but
15 it's also if they are not seeking to review a lot of things, I
16 was thinking simplicity, if they just identified what they
17 want, we would tell them what the exhibit number was.

18 THE COURT: Understood, but I -- yeah. I think I am
19 going to go with my approach.

20 MR. DAVIS: Sure.

21 THE COURT: And so I will tell them -- well,
22 depending on how we handle these other things, we will decide
23 whether or not I need to send a writing back or just -- or
24 bring them out.

25 So they did -- oh, one other thing. It's always helpful

1 -- all these little things come out that I don't always feel
2 like I need to call everybody back for, but then when I do have
3 you all here, I want counsel to be aware and put on the record,
4 there is one juror who has to put eyedrops in her eyes, and so
5 as a result of that, I guess she needs to lie down for ten
6 minutes, lie down flat. We have put a couch in the secured
7 hallway. She will never be outside of the sight of a CSO. And
8 so we just made that accommodation. It's one juror who I think
9 needs it for ten minutes during the lunch break is my
10 understanding. It's on the record. I wanted counsel to be
11 aware.

12 Now to the note. So I am going to take it in the -- I am
13 going to go in reverse order. Approximately how long is on or
14 about? My inclination would be to tell them to use their
15 common understanding of the words. I don't know that I would
16 define it beyond that. But I will hear if someone else has a
17 thought.

18 MS. DAVIS: Your Honor, our position is that all of
19 the evidence regarding Counts Two, Three, and Four dealt
20 specifically with October 3rd, 2018, and it's pretty obvious,
21 from the way the indictment was drafted, that is the evidence
22 that was given to the grand jurors. So I -- we agree with
23 Count One, that on or about is appropriate, but there is
24 absolutely nothing to suggest that on or about for the other
25 three counts is at all appropriate.

1 THE COURT: Isn't the language in the indictment on
2 or about?

3 MS. DAVIS: It is, but the evidence presented is a
4 specific date.

5 THE COURT: Isn't there also a jury instruction that
6 says -- and you might just be preserving this for record so I
7 am not trying to give you a hard time -- but isn't there also a
8 jury instruction that says it doesn't have to be the specific
9 date?

10 MS. DAVIS: There is -- there is, Your Honor, but in
11 looking over the case law, the only time I see that this has
12 been found to be appropriate is when there is a conspiracy
13 count where they can't specify exactly when it started and when
14 it ended, although I think it's pretty clear in this case when
15 they did. But, again, I don't -- I think to allow them to
16 think that Two, Three, and Four could have been committed on a
17 date other than October 3rd basically is a constructive
18 amendment to the indictment as it's written.

19 THE COURT: Well, it clearly would not be -- I mean,
20 you might make other arguments. It would not be any kind of
21 amendment to the indictment because the indictment specifically
22 says on or about, so those are the exact words in the
23 indictment. But I understand your point, though. I do
24 understand your point.

25 MS. DAVIS: And if I could just make one additional

1 point?

2 THE COURT: Sure.

3 MS. DAVIS: Now, there is an Instagram -- the
4 Instagram account specifies certain dates regarding the, you
5 know, the distribution of pills or marijuana, but they -- but
6 Count Two only specifies October 3rd for the -- as far as the
7 possession with intent to distribute drugs, and I think that if
8 Your Honor allows them to consider on or about, they could
9 think they can expand what -- what that means.

10 And I -- if Your Honor is inclined to leave in the on or
11 about, I would think there should be some instruction as to how
12 on or about -- how far back they can go because, otherwise, it
13 could be that Mr. Tejan would be actually convicted of
14 something that happened back in September.

15 THE COURT: Well, what would your -- I mean,
16 candidly, I likely will not follow it, but to make the record,
17 what would your suggestion be for what I should -- how I should
18 define on or about?

19 MR. DAVIS: The Court's indulgence.

20 THE COURT: Of course.

21 (Counsel conferring.)

22 MR. DAVIS: Your Honor, we are thinking of something
23 along the lines of taking into consideration what Your Honor
24 referenced: You should use your common-sense interpretation,
25 but I would add, of what the evidence presented demonstrates.

1 MS. DAVIS: And also the specific language in the
2 indictment of a specific date.

3 THE COURT: I will hear from the government.

4 MR. COLLINS: Your Honor, the Court has provided the
5 jury with an instruction, and that was the first thing that we
6 did is we went to the instruction just to look at it. I think
7 they should be referred back to the instruction. The
8 instruction provides them the guidance that they need. I think
9 any further -- any further instruction is just tipping the
10 scales on either -- either side of -- of the case. And so I
11 think the instruction is what they should be referred to. The
12 instruction is very clear. And then based on their
13 interpretation of the instruction, they should then go back and
14 review the evidence.

15 THE COURT: As I was talking to counsel, I was also
16 flipping through and found instruction variance on dates. It's
17 a short enough instruction that I probably will just reread it
18 to them, frankly, and not add much to that.

19 I might say, Beyond that, use your common understanding.

20 MR. DAVIS: On the evidence as presented?

21 THE COURT: Of the words "on or about."

22 MS. DAVIS: Your Honor, we would request that -- that
23 they be instructed that they have to consider the evidence
24 presented and to look at -- and to look at the date specified
25 in the indictment for Counts Two, Three, and Four.

1 THE COURT: I understand your position. I will -- I
2 am just going to reread the instruction. I won't add to it. I
3 will just reread the instruction. I understand your objection.

4 And to be -- I want to be clear, I understand the thought
5 process, so let me flesh it out a little more. I understand
6 the thought process behind your objection, the notion that,
7 well, maybe they have determined that he didn't possess drugs
8 on October 3rd but did on some other day and the evidence is
9 clearly about October 3rd, like, I get it, but the law still is
10 what the law is, so -- so I understand -- I want to be clear
11 that I understand your argument. I am just inclined to point
12 them back to the instruction I gave. So I have heard you. I
13 understand.

14 On question -- I thought that was the simple one. On
15 question one, I was confused, but that's because I don't have
16 the -- I don't have what they are looking at in front of me.
17 At least this does give Mr. Davis one opportunity to see what
18 they are looking at. It says, for the record, Given the
19 discrepancy in the evidence description present on page 1 of
20 Government Exhibit 174, why does item -- is that IVY24 have the
21 additional descriptor of 10 millimeter auto caliber? I don't
22 know if counsel might enlighten me as to what the issue is
23 there.

24 MR. DAVIS: Certainly, Your Honor. Well, first of
25 all, my position on this is that what they have, Government's

1 Exhibit No. 174, is the evidence, and it is for them to
2 interpret what the evidence means.

3 THE COURT: I am inclined to say something like that,
4 but I am also still curious as to what the issue is.

5 MR. DAVIS: I am going to show you what they are
6 asking about if Your Honor gives me a moment to get in here.

7 MR. COLLINS: I already have it up. I can put it on
8 the monitor if you want.

9 THE COURT: Whoever can do it quicker.

10 MR. COLLINS: Maybe not.

11 MR. DAVIS: I have it. Your Honor, what they are
12 referring to is -- and I referenced this in closing -- they are
13 referring to this description right here, IVY24. It has ten
14 millimeter auto caliber.

15 THE COURT: I remember you mentioning that in
16 closing.

17 MR. DAVIS: And up here are three cartridges that
18 were recovered, and it doesn't say that. The three cartridges
19 were identified as having been fired from the same firearm, as
20 you can see here; however, IVY24 was not grouped in with them.
21 The ballistics expert was not able to opine that -- that that
22 bullet -- partial -- that one fired partial bullet, he was
23 unable to say that it was fired from the same firearm as the
24 others. That's what they are asking. And I don't think we can
25 really give them much more than that. The evidence is the

1 evidence.

2 THE COURT: Yeah. So that's helpful for the Court to
3 understand. So what I will say, subject to -- subject to any
4 other input from counsel, Both evidence presentation and
5 argument have been completed, and so we can provide no
6 additional information on that at this point.

7 Any suggested edit to that?

8 MR. DAVIS: That's fine, Your Honor.

9 MR. COLLINS: No, Your Honor. The government -- I
10 mean, the government believes their recollection and
11 interpretation of the evidence is what controls at this point,
12 Your Honor.

13 THE COURT: I mean, it's just a different way of
14 saying that, but I agree with that concept.

15 I can then finish with, Your recollection and
16 interpretation of the evidence controls at this point.

17 MR. COLLINS: That's fine with the government.

18 MR. DAVIS: That's fine, Your Honor.

19 THE COURT: All right. So, just so we are all clear,
20 understanding that there is objections to at least some of
21 these rulings, I will tell them that as for their request for
22 an exhibit list, that we are going to try to create an evidence
23 -- an exhibit list for them. We are going to try to create a
24 list that they can -- that they can use, but I would recommend
25 that they continue to deliberate as best they can in the

1 meantime.

2 MR. COLLINS: And Your Honor, the government is
3 trying to be efficient. We are actually working on that list
4 right as the Court speaks and we will share with counsel as
5 soon as it's ready.

6 THE COURT: All right. I think they have already
7 ordered lunch, so my sense is they are in a mindset that they
8 are going to be here for a minute. That's always my indication
9 of where they think they are. So that's their first question.

10 And then I will turn to the note. As to the first
11 question on the note: Both evidence presentation and argument
12 have been completed, and so we can provide you no additional
13 information at this point. Your recollection and
14 interpretation of the evidence is what controls.

15 And then as to two, I will just say the only instruction
16 I can give them on that is the instruction that I previously
17 gave, and then I will read what was at one point -- I am
18 looking at an old draft -- but a variance on dates, which is
19 two sentences long -- three sentences long. That's what I read
20 to them before.

21 So subject to objections, that's what I intend to do.

22 Any other questions before I bring them out?

23 MR. COLLINS: No, Your Honor. Thank you.

24 MR. DAVIS: No, Your Honor. We are going to call
25 them back?

1 THE COURT: I decided to bring them out. Sometimes I
2 write a letter and sometimes I bring them out. It's three
3 things, so I will bring them out.

4 MR. DAVIS: Your Honor, they do have a computer back
5 there. Correct?

6 THE COURT: They should. We can confirm that with
7 Ms. Derro, but we usually send back a -- it's our standard
8 practice to send back a clean laptop.

9 MS. COTTINGHAM: And Your Honor, they don't have the
10 drugs or the cash back there. They have got everything else.

11 THE COURT: Good.

12 (The jury panel enter the courtroom at 10:37 a.m.)

13 THE COURT: You may be seated.

14 Good morning, ladies and gentlemen.

15 (The jury panel reply, "Good morning.")

16 THE COURT: Good to see you all. Hopefully you are
17 having a productive morning.

18 As I said, sometimes I will send a note back to you;
19 sometimes I will just bring you out here. I think there were
20 three things to address, and so it just seemed more efficient
21 to just bring you out here and go through them.

22 The first, there was a request, I think at the end of
23 yesterday, for an exhibit list. I certainly can understand how
24 that could be helpful, and so we want to work on that. There
25 is an official list that the Court has, but it has extraneous

1 information on it, which is why we don't send that to you, but
2 we are going to try to put together a list that you can use and
3 get that to you as soon as we can. But I will say, in the
4 meantime, you should continue to try to deliberate as -- as
5 best you can. Don't wait on it. But we understand the request
6 and we will try to get it to you.

7 Then we received two notes this morning. Just for the
8 record, the first is -- and I am just reading the note -- Given
9 the discrepancy in the evidence description present on page 1
10 of Government Exhibit 174, why does Item IVY24 have the
11 additional descriptor of 10 millimeter auto caliber?

12 The only thing I can say on that is that both evidence
13 presentation and argument of counsel have been completed, and
14 so we can provide no additional information or argument at this
15 point. Your recollection and evidence of the -- of what's been
16 presented is what controls, and so that's all that I can say on
17 that.

18 And then the last one was: Approximately how long is on
19 or about? On that, I will refer you back -- and I will read it
20 to you now because it's short -- the instruction I gave
21 regarding variance on dates. It's somewhere in that large
22 packet I sent back there.

23 But it reads as follows: The indictment alleges that the
24 offenses occurred on certain dates or at certain times. It
25 does not matter if the indictment charges that a specific act

1 occurred on or about a certain date or time and the evidence
2 shows that, in fact, it was on another date or time. The law
3 only requires a substantial similarity between the dates
4 alleged in the indictment and the date established by testimony
5 or exhibits.

6 That's in the instructions and it's all I can really say
7 in response to that question.

8 So, again, feel free at any time to send me another note
9 if you have a question, and we will continue to be as
10 responsive as we can.

11 With that, you are dismissed to continue your
12 deliberations. Thank you.

13 (The jury panel exit the courtroom at 10:41 a.m.)

14 THE COURT: After all these years, I finally gave in
15 to the complaints about how cold it is in here, and I am
16 sweating, and I want that on the record. See you later.

17 (Recess taken from 10:42 a.m. until 2:47 p.m.)

18 THE COURT: You may all be seated. Give me one
19 second.

20 I just wanted to clean up a couple other things first.
21 Do I have all of the notes that they have sent?

22 THE DEPUTY CLERK: With the exception of the first
23 and the note about the laptop.

24 THE COURT: All right. So, again, I like to put on
25 the record everything we have received from the jury, even the

1 ones that I handled without telling you at the time, so just to
2 catch us all up.

3 So at 12:24 -- and I had emailed the parties about this
4 one -- they indicated that page 55 of the jury instructions
5 alleges that Count Three occurred on or about April 13th, 2018.
6 Our understanding was that the alleged robbery occurred on
7 October 3rd, 2018, which is also stated on the verdict form.
8 Is this an error with the jury instructions or the verdict
9 form?

10 And I responded: You are correct that the wrong date is
11 on the jury instructions at page 55. It is alleged that a
12 robbery occurred on or about October 3rd, 2018. The verdict
13 form has the correct date.

14 And so I just sent that back to them earlier.

15 Then they also sent a note just indicating that they were
16 having a problem with the laptop, and we had someone take care
17 of that. That was at two p.m.

18 The current one, which I did -- which I did instruct
19 Ms. Derro I needed to consult with counsel on, was received at
20 2:24 p.m. Can a previous count, example, One, Two, or Three,
21 be found guilty but not also be included as a predicate charge
22 for Count Four and therefore left unchecked?

23 I don't know if you got a chance to read it before. So
24 if you are like me, you are instinctively trying to figure out
25 how they got to this point, and I don't know whether or not

1 it's necessarily useful, but I think the answer is yes.

2 MR. DAVIS: I think we are all in agreement on that.

3 MR. COLLINS: We are all in agreement.

4 THE COURT: So should I just say yes and leave it at
5 that?

6 MR. COLLINS: Yes.

7 MR. DAVIS: I think so.

8 THE COURT: That's what both counsel would like me to
9 do?

10 MR. COLLINS: Yes, Your Honor. We'd like you to say
11 yes.

12 THE COURT: Yeah. Instinctively, I had a longer
13 explanation, but I will go with that. So to make sure they
14 know, because, literally, if I am just going to put one word,
15 just make sure they know it's in response to this. I should
16 just write it on this.

17 THE DEPUTY CLERK: Yes.

18 THE COURT: That's fine.

19 You all made that too easy. All right. We will send
20 that note back to them and keep you posted.

21 MR. DAVIS: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. COLLINS: Thank you, Your Honor.

24 (Recess taken from 2:51 p.m. until 4:22 p.m.)

25 THE COURT: You may be seated. The temperature has

1 dropped like ten degrees since I made that comment earlier.

2 THE DEPUTY CLERK: I know. I apologize.

3 THE COURT: I didn't know if someone was responding
4 to that or not.

5 We received another note at 4:01 p.m. Does aiding and
6 abetting apply to first degree murder? On page 71 of jury
7 instructions, it states, The government must prove that the
8 defendant killed Anthony Freeland.

9 I believe the answer to Question No. 1 is yes.

10 MR. DAVIS: Although I don't think there is -- that
11 there is evidence to support a theory of aiding and abetting
12 here. I don't think the United States --

13 THE DEPUTY CLERK: Mr. Davis, would you talk into the
14 microphone?

15 MR. DAVIS: Although I don't think the United States
16 presented evidence that would support a theory of aiding and
17 abetting. I know that they always throw aiding and abetting
18 in, but I think the theory here is Mr. Tejan shot him.

19 I think where the confusion is coming from -- this was
20 what I was talking about with the dead horse I was beating --
21 these folks are hopelessly confused about first degree murder,
22 second degree murder. They are viewing this like a murder
23 case. This is a felony murder case. It's first degree as a
24 felony murder. There is no -- I mean, either Mr. Tejan used a
25 firearm in furtherance and in relation to a controlled

1 substance offense or a crime of violence resulting in death.
2 That's the issue. They are all over the place now. I mean, I
3 just don't know what they are doing.

4 THE COURT: Is the answer to No. 1 yes?

5 MR. DAVIS: Well, I am going to say no. My partner
6 disagrees with me, and I am going to say no because the United
7 States didn't present a theory --

8 THE COURT: That's a different question. Does aiding
9 and abetting apply? I feel like I have you on the stand now.

10 MR. DAVIS: And for first degree murder, yes, in the
11 abstract, it does. But in this case, I would submit that it
12 doesn't because there is no -- there is no factual theory
13 presented to this jury.

14 THE COURT: I also disagree on that, but that's not
15 the question here. But I will still respond, nonetheless,
16 because I can't help myself. The facts show that there were
17 two people in the car. They could have found that the other
18 person got -- I mean, it's pretty straightforward -- that the
19 other person got out and shot him, and that could be aiding and
20 abetting.

21 MR. DAVIS: But that wasn't the theory presented.
22 The theory presented was the facts -- the facts presented were
23 that Mr. Tejan got out of the car, walked over, and shot the
24 man.

25 THE COURT: That's fine. But the government can

1 present alternate theories. That's not the question here,
2 though, so I don't want to get too bogged down on that.

3 So the answer to that is yes, and I can just write that
4 in here since that seems to be the approach that counsel likes.

5 Question two, though: Are you charged with both first
6 and second degree murder simultaneously? On the verdict form
7 below Count Four, it says, Check all that apply.

8 I will confess I smacked myself in the head when I saw
9 this because when I saw the draft of the verdict form, I
10 started to take out "check all that apply" there because we
11 might recognize what it means to have lesser included --

12 MR. DAVIS: Some of us.

13 THE COURT: Some of us.

14 -- but it might be a confusing theory, and so we could
15 have just said check the one that applies, but we didn't. So I
16 am open to what counsel think we should do with No. 2.

17 MR. COLLINS: Well, Your Honor, just in general, I
18 think it's the government's position that, yes, you can be
19 simultaneously because second degree murder is a lesser
20 included one. I understand the Court's position that --

21 THE COURT: It's not a position. I hear you.

22 MR. COLLINS: In terms of how to address the -- I
23 guess your other point is how to address the verdict form. I
24 mean, it's already been presented to them in that way. I think
25 we are kind of stuck with the verdict form that we have and

1 it's --

2 THE COURT: So would your position be that I should
3 just say verdict form -- that I should just say yes rather than
4 going into a lengthier explanation of what it means to be
5 lesser included?

6 MR. COLLINS: The Court's indulgence on that one.

7 THE COURT: Sure.

8 MR. DAVIS: Your Honor, this is a two-part --

9 THE COURT: Hold on. Let me let them -- I don't want
10 to ask them to listen and talk to each other at the same time.

11 MR. COLLINS: I'm sorry, Your Honor. I am just
12 looking at the jury instructions real quick.

13 (Pause.)

14 MR. COLLINS: So, Your Honor, our position is that it
15 should be yes and that it's a lesser included. When you look
16 at the instructions, I mean, the instructions basically lay
17 that out, that first degree murder has an extra element that
18 second degree doesn't. And so -- I mean, I think that's
19 already present in the jury instructions, and this additional
20 instruction from the Court will help clarify that.

21 THE COURT: So am I saying just yes or something
22 beyond that in your -- what's your suggestion?

23 MR. COLLINS: So yes, second degree murder is a
24 lesser included of first degree murder.

25 THE COURT: Yes, comma, second degree murder is a

1 lesser included of first degree.

2 What does the defense say?

3 MS. DAVIS: Well, Your Honor, what do we do if they
4 come back checking both first and second?

5 THE COURT: Well, we would -- it would effectively --
6 it would mean that they determined that the elements of second
7 degree were satisfied and they also found premeditation, which
8 means that first degree was satisfied.

9 MS. DAVIS: And then we go back to the same --

10 THE COURT: I presume he would then be sentenced as a
11 first degree murderer.

12 MS. DAVIS: And then we come back to the same issue
13 that we have been raising all along, which I guess now that
14 horse is a skeleton, but that -- that these are felony murder
15 counts and they -- and second degree murder doesn't apply at
16 all to felony murder.

17 THE COURT: So I would say if they check both, I
18 would suggest that issue is mooted because they have decided
19 he's guilty of first degree murder. But your issue is
20 preserved, so you get to -- you get to put the meat back on the
21 skeleton in Richmond on that issue if that's where we end up if
22 they check second degree murder. But if they check first
23 degree murder, I would think it's a moot point, but it won't be
24 for me to decide that.

25 MS. DAVIS: Okay. Thank you.

1 MR. DAVIS: Even though aiding and abetting -- just
2 so our record is clear, I am going to object to telling them
3 that they can find aiding and abetting for first degree murder
4 because I don't believe that's a theory that's viable on the
5 facts of this case, at least according to the theory that the
6 United States tried the case on and the manner in which they
7 indicted him.

8 And the second question, I think Ms. Davis covered it. I
9 mean, we just -- if they find the predicates, it's first degree
10 murder, you don't have to deal with premeditation. It's just
11 first degree murder if they find the predicates. And I think
12 this just kind of -- it confuses it in a way and it makes it --
13 it makes it more likely they are going to convict. It just --
14 it just has more appeal, I think, to lead to a conviction.
15 Beyond that, I haven't got much more to add.

16 THE COURT: I don't know that -- well, I will just --
17 I won't -- I won't say it. All right.

18 Are both sides comfortable with me responding in writing?

19 MR. COLLINS: Yes, Your Honor.

20 MR. DAVIS: I'm sorry, Your Honor.

21 THE COURT: Are you comfortable with me responding in
22 writing?

23 MS. DAVIS: Yes, Your Honor.

24 MR. DAVIS: Yes.

25 THE COURT: Just so it's on the record, I recognize

1 there is disagreement. As to question one, I am just going to
2 write underneath question one "yes," and then put my name here.
3 Then under question two, I am writing, Yes. Second degree
4 murder is considered a lesser included offense of first degree
5 murder.

6 I didn't know if that was on the same subject or not?

7 MR. COLLINS: It's -- it's going back and forth
8 whether or not there is something else that needs to be added.
9 That's all, Your Honor.

10 THE COURT: So we are comfortable with, Yes -- well,
11 this side objects, but, Yes. Second degree murder is a lesser
12 included of first degree murder?

13 MR. COLLINS: Yes, Your Honor.

14 THE COURT: All right. Thank you.

15 MR. COLLINS: Thank you, Your Honor.

16 (Recess taken from 4:33 p.m. until 5:01 p.m.)

17 THE COURT: You may be seated.

18 We received a note at 4:42: We, the jury, have
19 unanimously reached a verdict. So we will bring the jury in.

20 (The jury panel enter the courtroom at 5:03 p.m.)

21 THE COURT: Everyone may be seated.

22 Good evening, ladies and gentlemen. We were informed
23 that you have reached a unanimous verdict, so we will now go
24 through the process by which we receive the verdict. I ask
25 that you pay close attention and follow the instructions of the

1 court clerk as she takes you through the process. I believe
2 the first thing she will do is take attendance.

3 THE DEPUTY CLERK: Thank you, Judge Hazel.

4 We are here to receive the verdict in Criminal Case No.
5 GJH-21-0101, the United States of America vs. Madani Ilara
6 Tejan.

7 Members of the jury panel, when I call your juror number,
8 would you please answer "present."

9 Juror No. 1.

10 A JUROR: Present.

11 THE DEPUTY CLERK: Juror No. 2.

12 A JUROR: Present.

13 THE DEPUTY CLERK: Juror No. 3.

14 A JUROR: Present.

15 THE DEPUTY CLERK: Juror No. 4.

16 A JUROR: Present.

17 THE DEPUTY CLERK: Juror No. 5.

18 A JUROR: Present.

19 THE DEPUTY CLERK: Juror No. 6.

20 A JUROR: Present.

21 THE DEPUTY CLERK: Juror No. 7.

22 A JUROR: Present.

23 THE DEPUTY CLERK: Juror No. 8.

24 A JUROR: Present.

25 THE DEPUTY CLERK: Juror No. 9.

1 A JUROR: Present.

2 THE DEPUTY CLERK: Juror No. 10.

3 A JUROR: Present.

4 THE DEPUTY CLERK: Juror No. 11.

5 A JUROR: Present.

6 THE DEPUTY CLERK: And Juror No. 12.

7 A JUROR: Present.

8 THE DEPUTY CLERK: Members of the jury, have you
9 agreed on your verdict?

10 (The jury panel reply, "Yes.")

11 THE DEPUTY CLERK: Who shall speak for you?

12 Would the foreperson please rise?

13 Has the verdict sheet which was submitted to the jury
14 been answered?

15 JURY FOREPERSON: Yes.

16 THE COURT: Is the form signed and dated by you?

17 JURY FOREPERSON: Yes.

18 THE DEPUTY CLERK: When I step down, please hand the
19 verdict form to me so that I may present it to the judge.

20 (Document passed forward to the judge.)

21 THE DEPUTY CLERK: As I read the questions, please
22 provide the answers.

23 Verdict form. Count One: Conspiracy to distribute and
24 possess with intent to distribute controlled substances.

25 How do you find the defendant, Madani Ilara Tejan, as to

1 the charge of conspiracy to distribute and possess with intent
2 to distribute controlled substances in Count One? Guilty or
3 not guilty?

4 JURY FOREPERSON: Guilty.

5 THE DEPUTY CLERK: Having found the defendant guilty
6 of Count One, do you find that the defendant conspired to
7 distribute or to possess with intent to distribute the
8 following substances and quantities?

9 No. 1: 40 grams or more of a mixture and substance
10 containing a detectable amount of N-phenyl-N propanamide [sic],
11 commonly known as fentanyl. Yes or no?

12 JURY FOREPERSON: Yes.

13 THE DEPUTY CLERK: No. 2: Oxycodone, a Schedule II
14 controlled substance. Yes or no?

15 JURY FOREPERSON: No.

16 THE DEPUTY CLERK: No. 3: Marijuana, a Schedule I
17 controlled substance. Yes or no?

18 JURY FOREPERSON: Yes.

19 THE DEPUTY CLERK: Count Two: Possession with intent
20 to distribute a controlled substance.

21 How do you find the defendant, Madani Ilara Tejan, as to
22 the charge of possession with intent to distribute a controlled
23 substance on or about October 3rd, 2018 in Count Two? Guilty
24 or not guilty?

25 JURY FOREPERSON: Guilty.

1 THE DEPUTY CLERK: Count Three: Interference with
2 interstate commerce by robbery.

3 How do you find the defendant, Madani Ilara Tejan, as to
4 the charge of interference with interstate commerce by robbery
5 on or about October 3rd, 2018 in Count Three? Guilty or not
6 guilty?

7 JURY FOREPERSON: Guilty.

8 THE DEPUTY CLERK: Count Four: Murder resulting from
9 the use, carrying, brandishing, and discharging of a firearm
10 during and in relation to, and possession, brandishing, and
11 discharging of a firearm in furtherance of, a drug trafficking
12 crime and a crime of violence.

13 How do you find the defendant, Madani Ilara Tejan, as to
14 the charge of murder resulting from the use, carrying,
15 brandishing, and discharging of a firearm during and in
16 relation to, and possession, brandishing, and discharging of a
17 firearm in furtherance of, a drug trafficking crime and a crime
18 of violence on or about October 3rd, 2018 in Count Four?
19 Guilty or not guilty?

20 JURY FOREPERSON: Guilty.

21 THE DEPUTY CLERK: Having found the defendant guilty
22 of Count Four, which of the following predicate offenses (drug
23 trafficking crimes or crime of violence) do you find were
24 committed?

25 1: Conspiracy to distribute and possess with intent to

1 distribute a controlled substance in Count One?

2 JURY FOREPERSON: No.

3 THE DEPUTY CLERK: Possession with intent to
4 distribute a controlled substance in Count Two? Yes or no?

5 JURY FOREPERSON: No.

6 THE DEPUTY CLERK: Interference with interstate
7 commerce by robbery in Count Three? Yes or no?

8 JURY FOREPERSON: Yes.

9 THE DEPUTY CLERK: Which of the following do you find
10 were committed during and in relation to, and in furtherance
11 of, the predicate offenses?

12 A firearm was used. Yes or no?

13 JURY FOREPERSON: Yes.

14 THE DEPUTY CLERK: A firearm was carried. Yes or no?

15 JURY FOREPERSON: Yes.

16 THE DEPUTY CLERK: A firearm was possessed. Yes or
17 no?

18 JURY FOREPERSON: Yes.

19 THE DEPUTY CLERK: A firearm was brandished. Yes or
20 no?

21 JURY FOREPERSON: Yes.

22 THE DEPUTY CLERK: A firearm was discharged. Yes or
23 no?

24 JURY FOREPERSON: Yes.

25 THE DEPUTY CLERK: What type of murder do you find

1 the defendant committed?

2 First degree murder. Yes or no?

3 JURY FOREPERSON: Yes.

4 THE DEPUTY CLERK: Felony murder. Yes or no?

5 JURY FOREPERSON: Yes.

6 THE DEPUTY CLERK: Second degree murder. Yes or no?

7 JURY FOREPERSON: Yes.

8 THE COURT: Do you wish to have the jury polled?

9 MR. DAVIS: We do, Your Honor.

10 THE COURT: Please poll the jury.

11 THE DEPUTY CLERK: Juror No. 2, having delivered the
12 verdict of the jury, is that your verdict also?

13 JURY FOREPERSON: It is.

14 THE DEPUTY CLERK: Thank you.

15 Juror No. 1, having heard the verdict of your foreperson,
16 is that your verdict also?

17 A JUROR: Yes, it is.

18 THE DEPUTY CLERK: Juror No. 3, having heard the
19 verdict of your foreperson, is that your verdict also?

20 A JUROR: Yes.

21 THE DEPUTY CLERK: Juror No. 4, having heard the
22 verdict of your foreperson, is that your verdict also?

23 A JUROR: Yes.

24 THE DEPUTY CLERK: Juror No. 5, having heard the
25 verdict of your foreperson, is that your verdict also?

1 A JUROR: Yes.

2 THE DEPUTY CLERK: Juror No. 6, having heard the
3 verdict of your foreperson, is that your verdict also?

4 A JUROR: Yes.

5 THE DEPUTY CLERK: Juror No. 7, having heard the
6 verdict of your foreperson, is that your verdict also?

7 A JUROR: Yes.

8 THE DEPUTY CLERK: Juror No. 8, having heard the
9 verdict of your foreperson, is that your verdict also?

10 A JUROR: Yes.

11 THE DEPUTY CLERK: Juror No. 9, having heard the
12 verdict of your foreperson, is that your verdict also?

13 A JUROR: Yes.

14 THE DEPUTY CLERK: Juror No. 10, having heard the
15 verdict of your foreperson, is that your verdict also?

16 A JUROR: Yes.

17 THE DEPUTY CLERK: Juror No. 11, having heard the
18 verdict of your foreperson, is that your verdict also?

19 A JUROR: Yes.

20 THE DEPUTY CLERK: And Juror No. 12, having heard the
21 verdict of your foreperson, is that your verdict also?

22 A JUROR: Yes.

23 THE DEPUTY CLERK: Members of the jury, you have
24 heard the verdict and answers thereto as delivered by your
25 foreperson, and the verdict has been recorded, and do each of

1 you agree? Please respond, "We do."

2 (The jury panel reply, "We do.")

3 THE DEPUTY CLERK: Verdict recorded, Your Honor.

4 THE COURT: Thank you. Could I have counsel on
5 sidebar, please?

6 (The following took place at sidebar outside the presence
7 of the jury; all counsel present.)

8 THE COURT: Can everyone hear me? Can the defense
9 hear me? Can the defense hear me?

10 MR. DAVIS: We can.

11 THE COURT: So the only thing I guess in hindsight
12 that maybe we could have worded differently, in terms of the
13 predicate offenses, it -- they obviously convicted on all three
14 predicate offenses, and then say, just as it's worded, they
15 found that the first two weren't committed, which would seem
16 inconsistent, but I think a pretty clear interpretation of it
17 is that they are finding that the murder was committed only in
18 furtherance of the robbery. I think that's the obvious
19 interpretation. Again, I am wishing maybe we had worded it
20 differently, but I just -- before we dismiss them, I wanted to
21 make sure we are comfortable with that.

22 MR. COLLINS: The government is, Your Honor. Thank
23 you.

24 MR. DAVIS: I mean, am I comfortable with it?

25 THE COURT: Well, I understand. I guess, in

1 fairness, it's probably addressed to the party that has to
2 defend it on appeal, so you can say what you want.

3 MR. DAVIS: Well, I just don't think -- this is
4 Monday morning quarterbacking. I mean, there is not much to
5 say.

6 THE COURT: All right.

7 MR. DAVIS: I think what -- well, I mean, it doesn't
8 even matter what I think.

9 THE COURT: Well, I wouldn't say that. If you have
10 something you want to say, I will hear you.

11 MR. DAVIS: No. I have nothing to put on record.

12 THE COURT: I didn't mean to indicate that it didn't
13 matter what you say. That's not at all what I meant, so I do
14 want to be clear on that.

15 MR. DAVIS: Thank you.

16 THE COURT: Sure.

17 (End of sidebar discussion.)

18 THE COURT: Ladies and gentlemen, thank you so much
19 for the time and attention you have given this case. I really
20 appreciate it. On behalf of the court as a whole, I want to
21 express our thanks. Our system just doesn't work unless we
22 have individuals willing to give, in this case, two weeks of
23 their time that you could have been doing other things to come
24 in and resolve disputes sometimes between two individuals,
25 sometimes to resolve a dispute between the government and an

1 individual, so I just thank you for that. The system would not
2 function without you being willing to do that.

3 I have one more thing that I am going to ask. It's a
4 favor, though. You don't have to do it. But I would love the
5 opportunity to just come back there and talk to you for a
6 little bit, first, frankly, to just thank you in a more
7 personal fashion; second, often I find that jurors have
8 questions for me in terms of how we do things or things that
9 maybe didn't make sense to you. Often, I also find that jurors
10 have feedback on how we can do things better, and we are always
11 eager to make this as good of a process for jurors as we can.

12 And so if you'd be willing to just hang out back there,
13 it will take me maybe five minutes to finish talking to the
14 lawyers. If you don't want to do it, that means you have five
15 minutes to run away before I can get back there. But if you
16 are willing to talk to me, I'd appreciate it. I won't take up
17 too much of your time.

18 But you are formally dismissed from this process with the
19 sincere thanks of the Court. Thank you so much. You may
20 return to the jury room.

21 (The jury panel exit the courtroom at 5:17 p.m.)

22 THE COURT: Counsel may be seated.

23 I am going to need Ms. Derro, though, because I need a
24 sentencing date. I was not expecting her to go back with the
25 jury. If need be, though, we will -- obviously, it will be a

1 different judge in any event, and so we could sign the
2 sentencing order later.

3 I do want to say again -- and I mean this, I said it
4 before the verdict, I will say it again -- a very well tried
5 case on both sides, which, particularly in a case of this
6 magnitude, is not something I take for granted. It's something
7 that I appreciate, the professionalism and the way in which you
8 tried this case. I thank you all for that.

9 You know, I guess with Ms. Derro not here, I don't want
10 to just hold you here, we can get a sentencing order to you at
11 some time in the future. Obviously, it will be signed by a
12 different judge in any event, so maybe that makes the most
13 sense.

14 MR. DAVIS: That's fine.

15 THE COURT: So is there anything else that we need to
16 accomplish?

17 MR. DAVIS: No.

18 THE COURT: All right. Thank you. I wish you well.

19 MR. COLLINS: Thank you, Your Honor.

20 (The proceedings were concluded at 5:18 p.m.)
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C E R T I F I C A T E

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Renee A Ewing

Renee A. Ewing, RPR, RMR, CRR
Official Court Reporter
April 5, 2023